



Inland Empire Waterkeeper
Advocacy • Education • Restoration • Enforcement

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June 29, 2015

Via U.S. Certified Mail

Smart Parts Auto & Truck Dismantling
Attention: Bridget Torres
8569 Beech Avenue, Ste A
Fontana, California 92335

American Arrow, LLC
Attention: Hasmik Kupalyan
15303 Arrow Boulevard
Fontana, California 92335

RE: Notice of Intent to File Suit for Violations of the Federal Water Pollution Control Act

Dear Ms. Torres and Mr. Kupalyan:

I am writing on behalf of Inland Empire Waterkeeper and Orange County Coastkeeper (collectively "Waterkeeper") in regard to violations of the Clean Water Act¹ and California's Storm Water Permit² occurring at 8569 Beech Avenue, Suite A, Fontana, California 92335 ("Smart Parts Facility" or "Facility").³ This letter is being sent to you as the responsible owner and/or operator of the Smart Parts Facility, or as the registered agent for this entity. This letter puts Smart Parts Auto & Truck Dismantling (hereinafter referred to as the "Smart Parts Facility Owner and/or Operator") on notice of the violations of the Storm Water Permit occurring at the Smart Parts Facility including, but not limited to, discharges of polluted storm water from the Smart Parts Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, the Smart Parts Facility Owner and/or Operator is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that a citizen give notice of his/her intention to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a). Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

³ On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 20145-0057-DWQ, which has no force or effect until its effective date of July 1, 2015. As of the effective date, Water Quality Order no. 2014-0057-DWQ will supersede and rescind the current Industrial Stormwater Permit except for purposes of enforcement actions brought pursuant to the current permit.

Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the state in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This letter addresses unlawful unpermitted pollutant discharges originating from adjoining parcels ("Property") that American Arrow owns and controls in Fontana, California. These parcels are located at 8569 Beech Avenue and 15303 Arrow Boulevard. American Arrow leases these parcels to auto dismantlers: Smart Parts Auto & Truck Dismantling, Empire Auto Dismantling, Infiniti & Nissan Auto Dismantling, All Toyot Auto Dismantling, and American Dismantling. These tenant operators are regulated as industrial dischargers under National Pollutant Discharge Elimination System ("NPDES") General Permits. 33 U.S.C § 1342. These tenant operators have engaged and continue to engage in violations of the Storm Water Permit at the Properties, thereby violating the Clean Water Act.

On April 15, 2015, Waterkeeper sent a letter issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act (hereinafter, "Notice Letter") to American Arrow, LLC, All Toyot Auto Dismantling, American Dismantling, Infiniti & Nissan Auto Dismantling, and Empire Auto Dismantling putting each party on notice that after the expiration of sixty (60) days from the date of the Notice Letter, Waterkeeper intended to file an enforcement action in Federal court against them for violations of the Storm Water Permit and the Clean Water Act. Waterkeeper filed its complaint against the parties on June 23, 2015, in the United States District Court, Central District of California. On June 24, 2015, the Court reassigned the case to Civil Case No. 8:15-cv-01009 TJH (PLAx).

By this letter issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act, Waterkeeper puts the Smart Parts Facility Owners and/or Operators on notice that after the expiration of sixty (60) days from the date of this Notice Letter, Waterkeeper intends to amend its pending enforcement action to add Smart Parts as a defendant liable for violations of the Storm Water Permit and the Clean Water Act at the Smart Parts Facility and the Property.

I. BACKGROUND

A. Orange County Coastkeeper and Inland Empire Waterkeeper

Inland Empire Waterkeeper is a program of Orange County Coastkeeper. Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D, Riverside, California 92506. Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Together, Orange County Coastkeeper and Inland Empire Waterkeeper have over 2,000 members who live and/or recreate in and around the Santa Ana River watershed. Waterkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of surface waters in Orange County and the Inland Empire. To further these goals, Waterkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Waterkeeper's members use and enjoy the Santa Ana River and its tributaries,

Etiwanda/San Sevaine Channel, and the Pacific Ocean and its shoreline (collectively “Receiving Waters”), into which pollutants from Smart Parts’ ongoing illegal activities are discharged. Waterkeeper members enjoy the Pacific Ocean and its shoreline, into which contaminants from the Santa Ana River and Etiwanda/San Sevaine Channel flow. Waterkeeper’s members use these areas to fish, sail, boat, paddleboard, canoe, kayak, swim, surf, hike, view wildlife, and engage in scientific study including monitoring activities. Discharges of polluted storm water and nonstorm water from the Smart Parts facility degrade water quality and harm aquatic life in the Receiving Waters and impair each of Waterkeeper’s members’ use and enjoyment of those waters. These violations are ongoing and continuous. Thus, the interests of Waterkeeper’s members have been, are being, and will continue to be adversely affected by the Parties’ failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owners and/or Operators of the Smart Parts Facility

Information available to Waterkeeper indicates that American Arrow is the owner of properties upon which Smart Parts operate. The Property Information Management System for the County of San Bernardino lists American Arrow as the sole owner of parcel 0232-141-200000 at 8569 Beech Ave., and parcels 0232-141-0000 and 0232-141-02-0000 at 15303 Arrow Ave. American Arrow is an active Limited Liability Company registered in California located at 15303 Arrow Boulevard, Fontana, California 92335. American Arrow is an owner as well as an operator of American Dismantling.

Information available to Waterkeeper indicates that Bridgett Torres, an individual DBA Smart Parts is an active business registered in California located at 8569 Beech Avenue, Suite A, Fontana, California 92335. Smart Parts operates automotive dismantling facilities on American Arrow’s property. The State Board confirmed receipt of the NOI for American Dismantling on April 15, 2015. American Dismantling’s NOI and NOI Receipt identify the facility name as “American Dismantling Inc” and address as “15303 Arrow Hwy Fontana CA 92335.” American Dismantling’s NOI and NOI Receipt identify the operator of the facility as “American Dismantling, Inc.” and contact person as Hasmik Kupalyan. SMARTS identifies the American Dismantling facility owner/operator as “American Dismantling, Inc” and the facility address as “15303 Arrow Hwy Fontana California 92335.” SMARTS identifies the Smart Parts facility name as “Smartparts Auto Truck Dismantling” and the facility address as “8569 Beech Ave Ste A, Fontana California 92335.” SMARTS lists the Smart Parts facility’s coverage under the Storm Water Permit as “Active.” Smart Part’s NOI, SWPPP, and Annual Reports list the facility WDID number as 8 36I023413.

C. The Facilities Storm Water Permit Coverage.

The Storm Water Permit is a statewide general NPDES permit issued by the State Board pursuant to Section 402 of the Clean Water Act. States with approved NPDES permit programs are authorized by Section 402(b) to regulate industrial storm water discharges through individual NPDES permits issued to dischargers and/or through the issuance of a statewide general NPDES permit applicable to all industrial storm water discharges. 33 U.S.C. § 1342. Prior to beginning industrial operations, dischargers are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent to Comply with the Terms of the General Permit to Discharge

Storm Water Associated with Industrial Activity to the State Board. *See* Storm Water Permit, Finding #3. Smart Parts submitted an NOI for the Smart Parts Facility. Smart Parts' NOI indicates that the Facility is approximately in 75,000 square feet and five percent of the site is impervious. The Facility's NOI lists the WDID for the facility as 8 36I023413. Smart Parts' NOI and SWPPP lists the Standard Industrial Classification ("SIC") code for the facility as 5015 (Motor Vehicle Parts, Used). Facilities classified as SIC code 5015 have Storm Water Permit coverage over the entire facility. *See* Storm Water Permit, Attachment 1. Therefore, the entire Smart parts Facility is subject to the Storm Water Permit's requirements.

D. Storm Water Pollution and the Waters Receiving the Parties' Discharges.

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the Smart Parts Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and adversely impact aquatic-dependent wildlife. These contaminated discharges can and must be controlled for downstream ecosystems to regain their health.

Storm water discharges from metal forging facilities, like the Smart Parts Facility, contain pollutants such as oil and grease ("O&G"), total suspended solids ("TSS"), specific conductance ("SC"), and heavy metals (such as copper, iron, lead, aluminum, and zinc). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water to the Santa Ana River and its tributaries pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Santa Ana River and its tributaries are receiving waters for discharges from the Smart Parts Facility. The Santa Ana River is an ecologically sensitive area. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, the Santa Ana River and its tributaries still provide essential habitat for dozens of fish, bird, and invertebrate species. These pollutants harm the special aesthetic and recreational significance that the Santa Ana River has for people in the surrounding communities, including Waterkeeper's members. The public's use of the Santa Ana River and its tributaries for water contact sports exposes people to toxic metals and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Santa Ana River and its tributaries.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Santa Ana River near or downstream of the point at which it receives polluted storm water discharges from the Smart Parts Facility (i.e., Santa Ana River Reaches 1 – 4) include: Agricultural Supply; Groundwater Recharge; Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Wildlife Habitat; and Rare, Threatened, or Endangered Species. *See* Basin Plan at Table 3-1. According to the 2010 303(d) List of Impaired Water Bodies, Reach 4 of the Santa Ana

River is impaired for pathogens, Reach 3 is impaired for copper, lead, and pathogens, and Reach 2 is impaired for indicator bacteria.⁴ Polluted discharges from industrial sites such as the Smart Parts Facility contribute to the degradation of these already impaired surface waters and of the ecosystems that depend on these waters.

II. THE FACILITIES AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Smart Parts Facility Site Description

Information available to Waterkeeper indicates the Smart Parts Facility is approximately seventy-five thousand (75,000) square feet and approximately between five (5) and twenty-five (25) percent impervious surface. The Facility is bordered by Beech Avenue to the west, between Arrow Highway to the north and the intersection of Beech Avenue and Whittram Avenue to the south. The point of egress/ingress to the Smart Parts facility includes one (1) driveway along Beech Avenue. Smart Parts is the first automobile dismantling business on the right after entering the property.

Smart Parts is surround by several auto dismantling operators. Each facility is comprised of a building, an outdoor area, and outdoor sheds. Smart Parts shares a common area for egress and ingress with All Toyot and Empire, who are also both tenants of American Arrow. Smart Parts is located in the southwest corner of the property. All Toyot is in the northwest corner of the property, across from Smart Parts. Empire is located across from Smart Parts and next to All Toyot and American Dismantling. American Dismantling extends in the northeast corner of the property and runs the entire eastern border. The southern third of American Dismantling borders the eastern border of Smart Parts.

Smart Parts occupies one of three parcels of land owned by American Arrow, currently designated by the San Bernardino County Property Information Management System as Parcel 0232-141-20-0000 at 8569 Beech Ave., Parcel 0232-141-01-0000 and Parcel 0232-141-02-0000 at 15303 Arrow Ave.

There are three structures on the Smart Parts site. The first is a building near the entrance on the middle northwest corner of the site which houses the office and customer service facilities. Immediately in from of the office, north of the facility, is a closed structure used for parts storage including batteries and dirty parts. West of the main office structure is an open roof covered structure used for dismantling and to store transmissions, engines, radiators and other greasy, oily and rusty parts. Waste vehicle fluids are stored and covered in the open roof covered structure next to the dismantling area.

The east of the property is delineated by a chain-link fence. An eight (8) foot concrete block wall borders the south and west edge of the Facility. The north of the property is divided from a common area, shared by other dismantlers, by eight (8) foot iron gates. Finally, a discharge point is located in the southwest corner of the property along the concrete block wall.

⁴ 2010 Integrated Report – All Assessed Waters, available at:

http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last accessed on April 8, 2014).

B. The Smart Parts Facility Industrial Activities and Associated Pollutants

Information available to Waterkeeper indicates the Facility is a specialty dismantler of used vehicles. In addition to reclaiming and selling used parts, the Owners and/or Operators of Smart Parts also restore some vehicles to be resold into the used car market. The Facility Owners and/or Operators conduct dismantling and/or wrecking activities of used motor vehicles for parts recycling or resale and for scrap. Discharges of polluted storm water and non-storm water from automobile salvage yards can carry numerous hazardous wastes. The Facility Owners and/or Operators store and/or generate hazardous wastes such as engine oil, hydraulic fluid, transmission fluid, gear oil, grease, antifreeze, coolant, red dye diesel, used oil, waste absorbent, household hazardous waste, fluff, metals, batteries, soap solvents, and pH affecting substances. Pollutants associated with operations at the Facility include, but are not limited to: oil and grease, total suspended solids, aluminum, iron, lead, zinc, and copper.

Information available to Waterkeeper, including photographs taken on site visits, indicates that automobile parts are stacked above the walls, unroofed and otherwise unshielded from the rain, around the entire perimeter of the Parties' facilities. Based on photographic evidence indicating a hole in the property wall at the southwest corner of the Facility, Waterkeeper believes that storm water runoff drains, after major storm events, from north to south and pools at the southwest corner. Waterkeeper also believes that a large rock has been placed in front of the drainage hole to block storm water sample collection. There is photographic evidence of the rock and its continued presence in front of the hole. There are also oil stains, uncovered salvaged engine parts, and various chemical containers stored without secondary containment. Regional Board inspectors have observed that serious housekeeping issues associated with regular flooding.

Information available to Waterkeeper indicates that storage of vehicles and equipment, storage of materials associated with vehicle dismantling, and other industrial activities occur outdoors at the Facility without adequate cover to prevent storm water and non-storm water exposure to pollutant sources, and without secondary containment or other adequate treatment measures to prevent polluted storm water and non-storm water from discharging from the Smart Parts Facility. Further, information available to Waterkeeper indicates that the pollutants associated with the Facility have been and continue to be tracked throughout the Smart Parts Facility, where they accumulate at the storm water discharge point and the driveways leading to Beech Avenue. This results in trucks and vehicles tracking sediment, dirt, oil, grease, metal particles, and other pollutants off-site. The resulting illegal discharges of polluted water impacts Waterkeeper's members' use and enjoyment of the Santa Ana River and its tributaries by degrading the quality of the Santa Ana River and by posing risks to human health and aquatic life.

C. The Facilities' Storm Water Flows and Discharge Locations

The Smart Parts Facility Owner and/or Operator reports that there is one (1) discharge point located on-site. The SWPPP identifies this discharge point as the "Primary Discharge Point." The Primary Discharge Point is located in the southwest corner of the Facility near the concrete wall along Beech Avenue. The Facility's SWPPP states that the Facility does not have storm water on-

flow and that storm water from the entire Facility flows to the Primary Discharge Point. All discharge points lead from the Smart Parts Facility to Beech Avenue and to the municipal separate storm sewer system, which flows to the Santa Ana River.

Information available to Waterkeeper indicates that the Primary Discharge Point was patched in November 2013, but upon a new storm event in March 2014, Waterkeeper observed a new hole in the southwest corner of the Facility. Waterkeeper also documented the installation of a large rock on the Beech Avenue side of the concrete wall. This rock obstructs the view of the discharge point and prevents the collection of storm water samples.

III. THE PARTIES' VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

A. Discharges of Polluted Storm Water from the Smart Parts Facility in Violation of Effluent Limitation B(3) of the Storm Water Permit

Effluent Limitation B(3) of the Storm Water Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of best management practices ("BMPs") that achieve best available technology economically achievable ("BAT") for toxic pollutants⁵ and best conventional pollutant control technology ("BCT") for conventional pollutants.⁶ Benchmark Levels are relevant and objective standards to evaluate whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the Storm Water Permit.⁷

Storm water sampling at the Smart Parts Facility demonstrates that the Facility's storm water discharges contain concentrations of pollutants above the Benchmark Levels. *See* Exhibit A (table listing the Facility's storm water samples exceeding Benchmark Level(s), as reported to the Regional Board by the Smart Parts Facility Owner and/or Operator and in samples collected by Waterkeeper). The repeated and significant exceedances of Benchmark Levels demonstrate that the Smart Parts Facility Owner and/or Operator has failed and continues to fail to develop and/or implement BMPs to prevent the exposure of pollutants to storm water and to prevent discharges of polluted storm water from the Smart Parts Facility, in violation of Effluent Limitation B(3) of the Storm Water Permit.

Information available to Waterkeeper indicates that the Smart Parts Facility Owner and/or Operator violates Effluent Limitation B(3) of the Storm Water Permit for failing to develop and/or

⁵ Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

⁶ Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biological oxygen demand, total suspended solids, oil and grease, pH, and fecal coliform.

⁷ *See* EPA Storm Water Multi-Sector Permit (2008), Fact Sheet, p. 106; *see also*, EPA Storm Water Multi-Sector Permit, 65 Federal Register 64839 (2000).

implement BMPs that achieve BAT/BCT each time storm water is discharged from the Smart Parts Facility. *See e.g.*, Exhibit B (setting forth dates of rain events resulting in a discharge at the Facility).⁸ These discharge violations are ongoing and will continue each day the Smart Parts Facility Owner and/or Operator discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Waterkeeper will update the number and dates of violation when additional information and data becomes available. Each time the Smart Parts Facility Owner and/or Operator discharges polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Smart Parts Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since June 29, 2010.

B. Discharges of Polluted Storm Water from the Smart Parts Facility in Violation of Receiving Water Limitations C(1) and C(2) of the Storm Water Permit

Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface water or ground water that adversely impact human health or the environment. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit and the Clean Water Act. Receiving Water Limitation C(2) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable water quality standard ("WQS").⁹ Discharges that contain pollutants in excess of an applicable WQS violate Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act.

As explained above in Section I.D, the 2010 303(d) List of Impaired Water Bodies lists the Santa Ana River as impaired for multiple pollutants. Information available to Waterkeeper indicates that the Smart Parts Facility's storm water discharges contain elevated concentrations of pollutants, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Santa Ana River. *See* Exhibit A (table listing the Facility's storm water samples containing pollutants). Discharges of elevated concentrations of pollutants in the storm water from the Smart Parts Facility also adversely impact human health. These harmful discharges from the Smart Parts Facility are violations of Receiving Water Limitation C(1).

The Smart Parts Facility storm water discharges also contain concentrations of pollutants that cause or contribute to violations of applicable WQSs. *See* Exhibit A (table listing the Facility's

⁸ Exhibit B sets forth dates of significant rain events as measured at the nearest rain gauge from October 1, 2010 to February 23, 2015. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in measurable discharges at a typical industrial facility. Additional rain events will be updated as information becomes available.

⁹ As explained above in Section I.D, the Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to the impairment of the Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and the water quality objectives in the Basin Plan.

storm water samples exceeding applicable WQSs, as reported to the Regional Board by the Smart Parts Facility Owner and/or Operator and in samples collected by Waterkeeper). Storm water discharges from the Smart Parts Facility that cause or contribute to exceedances of WQSs are violations of Receiving Water Limitation C(2).

Information available to Waterkeeper indicates that the storm water discharges from the Smart Parts Facility violate Receiving Water Limitations C(1) and/or C(2) each time storm water is discharged from the Facility. These violations are ongoing, and will continue each time contaminated storm water is discharged in violation of Receiving Water Limitation C(1) and/or C(2) of the Storm Water Permit. Each time discharges of storm water from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). Each time discharges of storm water from the Smart Parts Facility cause or contribute to an exceedance of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). Waterkeeper will update the number and dates of violations when additional information becomes available. The Smart Parts Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since June 29, 2010.

C. Failure to Develop, Implement and/or Revise an Adequate Storm Water Pollution Plan

Section A(1) and Provision E(2) of the Storm Water Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Smart Parts Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* Storm Water Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9), and must be revised as necessary to ensure compliance with the Storm Water Permit. *Id.*, Sections A(9) and (10).

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* Storm Water Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* Storm Water Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* Storm Water Permit, Section A(6)). Sections A(7) and A(8) of the Storm Water Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in

storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

Information available to Waterkeeper indicates that the Smart Parts Facility Owner and/or Operator has been conducting operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, the SWPPP site map for the Smart Parts Facility does not include all of the information required by Section A(4) of the Storm Water Permit, such as the portions of the drainage area impacted by run-on from surrounding area, areas of soil erosion, nearby waterbodies, the location of the storm water collection and conveyance system, structural control measures that affect storm water discharges, or an outline of all impervious areas of the Facility.

The Smart Parts Facility Owner and/or Operator has also failed to revise the Facility's SWPPP to ensure compliance with the Storm Water Permit. Despite the significant concentrations of pollutants in the Facility's storm water discharges every year since at least the 2009-2010 Wet Season,¹⁰ the Facility's current SWPPP is dated October, 2010, and therefore was never revised to include additional BMPs to eliminate or reduce these pollutants, as required by the Storm Water Permit.

The Smart Parts Facility Owner and/or Operator has failed to adequately develop, implement, and/or revise a SWPPP, in violation of Section A and Provision E(2) of the Storm Water Permit. Every day the Smart Parts Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Smart Parts Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least June 29, 2010. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. The Smart Parts Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since June 29, 2010.

D. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate Monitoring and Reporting Program ("M&RP") by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* Storm Water Permit, Section B(2). The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.*

¹⁰ The Storm Water Permit defines the Wet Season as October 1 – May 30.

Sections B(3) – B(16) of the Storm Water Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* Storm Water Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4).

Sections B(5) and B(7) of the Storm Water Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged. Under Section B(5) of the Storm Water Permit, the facility owners and/or operators are required to collect at least two (2) samples from each discharge location at their facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, SC, total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities. *See* Storm Water Permit, Section B(5)(c). The Storm Water Permit requires facilities classified as SIC code 5015, such as the Smart Parts Facility, to also analyze storm water samples for aluminum, lead, and iron. *Id.*; *see also* Storm Water Permit, Table D, Sector M. The SWPPP also requires analysis for copper and zinc. *See* SWPPP, Chain of Custody Record.

The Smart Parts Facility Owner and/or Operator has been conducting operations at the Smart Parts Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Smart Parts Facility Owner and/or Operator has failed and continues to fail to conduct all required quarterly visual observations of unauthorized discharges, in violation of Section B(3) of the Storm Water Permit. *See* 2012-2013 Annual Report. Additionally, the Smart Parts Facility Owner and/or Operator has failed to provide the records required by Section B(4) of the Storm Water Permit for the monthly visual observations of storm water discharges.

The Smart Parts Facility Owner and/or Operator also failed to collect and analyze storm water samples as required by the Storm Water Permit. For example, no storm water samples were collected during the 2012-2013 Wet Season, rather than the two storm water samples required by Section B(5) of the Storm Water Permit, despite qualifying rain events. Further, the Smart Parts Facility Owner and/or Operator failed to collect any storm water samples during multiple Annual Reporting years, despite the occurrence of Qualifying Storm Events, in violation of Section B(5) of the Storm Water Permit.

The nearest rain gauge data to Smart Parts shows numerous Qualifying Storm Events occurring during the Wet Season sufficient to generate stormwater runoff at the Smart Parts site. The storm events for the 2012-2013 period meeting the criteria for reportable events are as follows: Thursday, October 11, 2012, .28 inches; Thursday, November 8, 2012, .14 inches; Thursday, November 29, 2012, .15 inches; Wednesday, December 12, 2012, .19 inches; Tuesday, December

18, 2012, .28 inches; Monday, December 24, 2012, .27 inches; Thursday, January 24, 2013, .21 inches; Friday, February 8, 2013, .36 inches; Tuesday, February 19, 2013, .34 inches; Thursday, March 7, 2013, .12 inches; and Monday, May 6, 2013, .14 inches.

The storm events for the 2013-2014 period meeting the criteria for reportable events are as follows: Wednesday, October 9, 2013, .18 inches; Monday, October 28, 2013, .19 inches; Thursday, November 21, 2013, .70 inches; Thursday, December 19, 2013, .32 inches; Thursday, February 6, 2014, .13 inches; Thursday, February 27, 2014, .30 inches; Wednesday, April 2, 2014, .15 inches; and Friday, April 25, 2014, .25 inches.

The storm events for the 2014-2015 period meeting the criteria for reportable events are as follows: Friday, November 21, 2014, .2 inches; Friday, December 12, 2014, 1.6 inches; Monday, January 16, 2015, .29 inches; and Monday, February 23, 2015, .24 inches.

The Smart Parts Facility Owner's and/or Operator's failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of Section B and Provision E(3) of the Storm Water Permit. Every day that the Smart Parts Facility Owners and/or Operators conducts operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Smart Parts Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least June 29, 2010. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. The Smart Parts Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since June 29, 2010.

E. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section B(14) of the Storm Water Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13).

The Smart Parts Facility Owner and/or Operator failed to submit Annual Reports that comply with the Storm Water Permit reporting requirements. For example, in each Annual Report since the filing of the 2009-2010 Annual Report, the Smart Parts Facility Owner and/or Operator certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility have always contained concentrations of pollutants above Benchmark Levels, thus

demonstrating that the SWPPP's BMPs have never adequately addressed existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Smart Parts Facility Owner and/or Operator has also submitted incomplete Annual Reports. For instance, none of the Annual Reports have included an evaluation of the visual observation and sampling and analysis results, in violation of Section B(14) of the Storm Water Permit. In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). The Smart Parts Facility Owner and/or Operator did not report its non-compliance as required.

Finally, the Storm Water Permit requires a permittee whose discharges violate the Storm Water Permit Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards. Storm Water Permit, Receiving Water Limitations C(3) and C(4). Information available to Coastkeeper indicates that the Smart Parts Facility Owner and/or Operator has failed to submit the reports required by Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. As such, the Smart Parts Facility Owner and/or Operator is in daily violation of this requirement of the Storm Water Permit.

Information available to Waterkeeper indicates that the Smart Parts Facility Owner and/or Operator has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Smart Parts Facility Owner and/or Operator is in daily violation of the Storm Water Permit. Every day the Smart Parts Facility Owner and/or Operator conducts operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Smart Parts Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least June 29, 2010. These violations are ongoing. The Smart Parts Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since June 29, 2010.

IV. RELIEF AND PENALITIES SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for each violation occurring during the period commencing five (5) years prior to the date of a notice of intent to file suit letter. These provisions of law authorize civil penalties of up to \$37,500 per day, per violation, for all Clean Water Act violations on and after January 12, 2009. In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

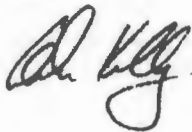
V. CONCLUSION

For the reasons set forth above, Waterkeeper intends to file suit against Smart Parts sixty days from the date of this notice under Section 505(a) of the Clean Water Act for Smart Parts' violations of the Storm Water Permit. Waterkeeper will prosecute these and similar violations, including all violations occurring after service of this notice, and all violations revealed upon discovery. Each instance of unlawful discharge constitutes a separate and distinct violation of the Storm Water Permit and of the Clean Water Act, resulting in additional civil liability. 33 U.S.C. §1311(a). Waterkeeper will pursue the maximum imposition of civil penalties against Smart Parts for such violations, and whatever additional relief is necessary to ensure Clean Water Act compliance.

Waterkeeper is willing to discuss remedies for the violations described in this Notice of Intent to File Suit. Should the Smart Parts Owners and/or Operators wish to enter such discussions, or should you have any questions regarding this notice, please contact Waterkeeper's legal counsel:

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Sincerely,



Colin Kelly
Staff Attorney
Inland Empire Waterkeeper
Orange County Coastkeeper

SERVICE LIST

VIA U.S. CERTIFIED MAIL

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Exhibit A

US EPA Benchmark and WQS Exceedance Chart

Discharger or Waterkeeper Sample	Date of Sample Collection	Sample Location	Parameter	Result	Units	USEPA Benchmark	Magnitude of Benchmark Exceedance	California Toxics Rule Criteria	Magnitude of CTR Exceedance
2011-2012 Wet Season									
W	3/17/2012	MP1	Fe	1.3	mg/L	1	1.3	n/a	n/a
W	3/17/2012	MP1	Al	1.8	mg/L	0.75	2.4	n/a	n/a
W	3/17/2012	MP1	Cu	0.34	mg/L	n/a	n/a	0.013	26.15
W	3/25/2012	MP1	Fe	2.2	mg/L	1	2.2	n/a	n/a
W	3/25/2012	MP1	Al	1.8	mg/L	0.75	2.4	n/a	n/a
W	3/25/2012	MP1	Cu	0.026	mg/L	n/a	n/a	0.013	2
2013-2014 Wet Season									
W	2/28/2014	MP1	Al	15	mg/L	0.75	20	n/a	n/a
W	2/28/2014	MP1	Fe	17	mg/L	1	17	n/a	n/a
W	2/28/2014	MP1	Zn	0.88	mg/L	0.11	8	0.12	7.33
W	2/28/2014	MP1	Cu	0.053	mg/L	n/a	n/a	0.013	4.08
W	2/28/2014	MP1	TSS	500	mg/L	100	5	n/a	n/a
D	3/1/2014	MP1	Zn	0.127	mg/L	0.11	1.15	n/a	n/a
D	3/1/2014	MP1	TSS	101	mg/L	100	1.01	n/a	n/a

Date	Day of Week	Precipitation (inches)
10/1/2010	Friday	.15
10/25/2010	Monday	.28
11/08/2010	Monday	.23
11/20/2010	Saturday	.78
11/21/2010	Sunday	.24
12/5/2010	Sunday	.29
12/6/2010	Monday	.19
12/16/2010	Thursday	.17
12/17/2010	Friday	.56
12/18/2010	Saturday	.44
12/19/2010	Sunday	2.24
12/20/2010	Monday	2.34
12/21/2010	Tuesday	1.7
12/22/2010	Wednesday	2.4
12/25/2010	Saturday	.19
12/26/2010	Sunday	.11
12/29/2010	Wednesday	.41
1/2/2011	Sunday	.33
1/30/2011	Sunday	.23
2/16/2011	Wednesday	.39
2/18/2011	Friday	.31
2/19/2011	Saturday	.47
2/25/2011	Friday	.46
2/26/2011	Saturday	.88
3/20/2011	Sunday	.75
3/21/2011	Monday	.51
3/23/2011	Wednesday	.24
3/25/2011	Friday	.32
5/17/2011	Tuesday	.15
5/18/2011	Wednesday	.17
7/31/2011	Sunday	.56
10/5/2011	Wednesday	1.02
11/4/2011	Friday	.31
11/12/2011	Saturday	.15
11/20/2011	Sunday	.54
12/12/2011	Monday	.34
1/21/2012	Saturday	.40
1/23/2012	Monday	.29
2/11/2012	Saturday	.21
2/15/2012	Wednesday	.2
3/17/2012	Saturday	.98
3/18/2012	Sunday	.19
3/25/2012	Sunday	.54

Date	Day of Week	Precipitation (inches)
4/11/2012	Wednesday	.33
4/13/2012	Friday	.62
4/26/2012	Thursday	.23
10/11/2012	Thursday	.28
11/8/2012	Thursday	.14
11/29/2012	Thursday	.15
11/30/2012	Friday	.36
12/3/2012	Monday	.28
12/12/2012	Wednesday	.19
12/13/2012	Thursday	.63
12/18/2012	Tuesday	.28
12/24/2012	Monday	.27
12/26/2012	Wednesday	.19
12/29/2012	Saturday	.14
1/06/2013	Sunday	.14
1/24/2013	Thursday	.21
1/25/2013	Friday	.39
1/27/2013	Sunday	.6
2/8/2013	Friday	.36
2/19/2013	Tuesday	.34
3/7/2013	Thursday	.12
3/8/2013	Friday	.54
5/6/2013	Monday	.14
10/9/2013	Wednesday	.18
10/28/2013	Monday	.19
11/21/2013	Thursday	.7
12/7/2013	Saturday	.23
12/19/2013	Thursday	.32
2/6/2014	Thursday	.13
2/27/2014	Thursday	.3
2/28/2014	Friday	1.56
3/1/2014	Saturday	.48
4/2/2014	Wednesday	.42
4/25/2014	Friday	.25
4/26/2014	Saturday	.17
8/3/2014	Sunday	.3
8/20/2014	Wednesday	.71
9/8/2014	Monday	.17
11/1/2014	Saturday	.53
11/21/2014	Friday	.2
12/2/2014	Tuesday	1.16
12/3/2014	Wednesday	.84
12/4/2014	Thursday	.23
12/12/2014	Friday	1.6

Date	Day of Week	Precipitation (inches)
12/16/2014	Tuesday	.12
12/17/2014	Wednesday	.6
1/11/2015	Sunday	.24
1/26/2015	Monday	.29
2/23/2015	Monday	.24
Total No. of Days		92